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ORIGINAL

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

NATIONAL CREDIT UNION ADMINISTRATION  
BOARD and GRAEME W. BUSH,

Plaintiffs,

- against -

U.S. BANK NATIONAL ASSOCIATION,

Defendant.

18 Civ. 11366 (LLS)

ORDER

The Court's July 23, 2020 Order held, with regard to the breach of pre-EOD duties, that as a matter of pleading, plaintiffs raised a plausible inference that U.S. Bank "discovered, had actual knowledge, and received written notice of file defects or warranty breaches" in 49 of the 50 trusts. Order at 8. It held that for six trusts, plaintiffs adequately pled that U.S. Bank had actual knowledge and received written notice of the servicers and master servicers failures and breached its post-EOD duties. Order at 13.

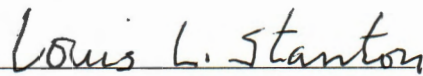
On summary judgment, the issue will be whether there is a genuine issue of material fact whether the bank had such knowledge as to invoke its duty under the contractual language. That is a question of law to be determined by the Court unless that language is ambiguous. If it is clear, it will not be affected by evidence of customary usage, occasions on which knowledge will be imputed, or experts' opinions on what the outcome should be as a matter of business practice.

Therefore, expert discovery shall be reserved until after the Court has decided any motion for summary judgment. If the issues cannot be decided by summary judgment, then expert opinion may become admissible.

Accordingly, U.S. Bank's position, "that all expert discovery should wait until the Court decides summary judgment motions", prevails.

So ordered.

Dated: New York, New York  
December 16, 2020



LOUIS L. STANTON

U.S.D.J.